IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.59 OF 1999

The Commissioner of Income tax ..Petitioner.

V/s.

M/s. K.B.C. International Ltd. ..Respondent.

Mr.A.Kotangale with P.S. Sahadevan for Petitioner.

Mr.Parag Pardiwalla i/b. Shaunak Satpute & Co. for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 6TH MARCH, 2007.

ORAL JUDGMENT (PER DR.S.RADHAKRISHNAN, J.)

Heard the learned counsel for the petitioner and the respondent. The above application Was admitted on the following questions of law:-

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing weighted deduction, U/s.35B in respect of guarantee commission to E.C.G.S. ?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding the order of CIT(A) in deleting the amount of Rs.60,000/- being grant-in-aid received, from the income of the assessee considering the same as capital receipt ?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding the order of CIT(A) in allowing deduction in the computation of income for the loss of Rs.28,39,887/- claimed by the assessee

in respect of import licences which was caused by the change in the method of valuation of closing stock of licences on hand which was consistently followed in the past ?

2. The application pertains to the assessment year 1975-76.

3. As far as the first question is concerned, both the learned counsel for the petitioner and the respondent fairly state that the issue is squarely covered by the Judgment of this Court in the case of **Commissioner of Income Tax V/s. Walchandnagar Industries** reported in **262 I.T.R. 212** in favour of the assessee and against the revenue.

4. As far as the second question of law is concerned, the learned counsel for the petitioner relied upon the Judgment of the Supreme Court in the case of **Sahney Steel and Press Works Ltd. & Ors. V/s. Commissioner of Income-tax** reported in **(1997) 288 I.T.R. 253**. In the said Judgment, it is held that if the grant-in-aid is for acquiring a capital asset, then the grant cannot be included in the revenue receipt. In the present case, grant was given for setting up of their office in USA for the purchase of assets of permanent or semi permanent nature as can be seen in

para 9 of the Tribunal's order. In this view of the matter, in our opinion, the question No.2 is squarely covered by the Judgment of the Apex Court.

5. As far as the third question of law is concerned, the findings of the Tribunal is that change in the method of accounting on account of premium on import entitlement from estimated basis to actual basis was bonafide and proper. This is a finding of fact.

6. Thus, the first two questions raised in this application are covered by the decision of this Court as well as the Apex Court. The third question is based on finding of fact.

7. For the aforesaid reasons, no purpose would be served by calling for the statement of the case. Accordingly, the rule is discharged.

8. Application stands disposed of.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)